IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 260 OF 2007

Mehula Manish Maru. .. Applicant.

vs.

State of Maharashtra

& Ors. .. Respondents.

Ms. Sumedha Rao for Applicant.

Mrs. Chitra Phadke for respondent No.2.

CORAM: J.N. PATEL &,

A.A. SAYED, JJ.

DATE: 3RD AUGUST 2007.

P.C.

. Heard.

2. We propose to dispose of this revision application at the stage of admission itself as the only issue which is required to be decided is whether the minor girl child of the couple who has admittedly been staying with mother and is going to be now of three years deserves to be granted interim maintenance.

3. This is a revision application against an interim order where the Family Court probably

overlooked the case of the minor child for granting interim maintenance.

4. It is submitted by the learned counsel for the applicant-wife who is also representing the cause of the minor child that the sum of Rs. 1500/- awarded to the wife is itself meagre amount in which the bare necessities of life cannot be met. It is submitted that the child is now three years old and is admitted to a play school and the expenses of the play school is in the range of Rs. 1500/- per month leave aside the other bare necessities of life which a girl child requires at this age.

5. On the other hand, the learned counsel for the respondent-husband submits that the respondent-husband is not capable of maintaining the wife as well as the child as he suffers from epilepsy and has no source of income. It is further submitted that the respondent-husband himself is being maintained by his relatives and as he is at the mercy of the relatives, it is not possible for him to provide any maintenance either to the wife or the child.

6. We do not want to go into the merits of the matter on the issue of capacity of the respondent-husband to maintain himself, his estranged wife and girl child as that is the matter which will have to be decided by the Family Court on evidence.

7. The very fact that the Family Court found that the wife deserves to be granted interim maintenance, in our view, it went wrong in overlooking the claim of the girl child. On this count, it is the submission of the learned counsel appearing for the respondent-husband that if the body of the interim order is read the actual interim maintenance of Rs. 1500/- per month has been awarded to the girl child and not to the wife. Maybe, that is so. But that issue ought to have been taken before the Judge of the Family Court. What we find and get from the reading of the operative part of the order is that the Court was also inclined to grant maintenance to the girl child but while passing the operative part it only awarded maintenance to the wife. This may be due to inadvertence.

8. In the given facts and circumstances, we are of the view that at least the respondent-husband can be directed to take care of the education of the girl child. We, therefore, allow this revision application and direct the respondent-husband to pay a sum of Rs. 1500/- per month towards interim maintenance for the girl child from the date of the application made before Family Court. We further direct that the respondent would deposit all arrears of maintenance in the Family Court on or before 30th September, 2007, and would start paying maintenance for each month from August, 2007 on or before 10th and would continue to pay

maintenance every month by depositing the same or directly tendering it to the wife by cheque or pay order on or before 10th of each month.

9. The learned counsel for the respondent-husband submitted that the respondent-husband may be given accommodation in clearing of the arrears i.e. he may be permitted to pay the arrears of interim maintenance to the child as directed by this Court in instalment along with the maintenance of the current month i.e. August, 2007 till the arrears are cleared i.e. Rs. 1500/- for the current month and a sum of Rs. 750/- towards the arrears, in all a sum of Rs. 2250/- till the arrears are cleared and thereafter at the rate of Rs. 1500/- per month. We order accordingly.

10. We further make it clear that this is without prejudice to the rights of the parties. The learned counsel for the respondent-husband submitted that this Court may direct the Family Court for expeditious disposal of the application filed by the wife under Section 125 of the Criminal Procedure Code. The parties are given liberty to move the Family Court for expeditious disposal of the case.

11. The Criminal Revision Application stands disposed of accordingly with costs quantified at Rs. 3000/-

(J.N. Patel, J.)

(A.A. Sayed, J.)